

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8**

EDGE SEAL TECHNOLOGIES, INC.¹

Employer

and

Case No. 8-RC-16108

**INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
LOCAL 377, AFL-CIO**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,² the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and 2(6) and (7) of the Act.

¹ The Employer's name is as stipulated in Board Exhibit 2.

² The parties have filed briefs which have been duly considered.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:³

All hourly production, maintenance, and driver employees employed by the Employer at its 6750 Victoria Road East, Austintown, Ohio location, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

The Employer is engaged in the fabrication of insulated glass units for the residential window industry, at its Austintown, Ohio facility, the only location involved herein. There are approximately 33 employees in the unit found appropriate.

The parties disagree over the voting eligibility of production line leaders and two clerical employees whom the Employer refers to as production schedulers. The Employer would include the two production line leaders. The Petitioner contends that these individuals are supervisors within the meaning of Section 2(11) of the Act and, therefore, must be excluded from the unit. Additionally, the Employer asserts that the two production schedulers are plant clericals who should be included in the unit. The Petitioner, however, contends that these individuals are office clericals who do not share a community of interest with the other employees in the unit.

At the hearing, one witness, Jeffery Martin , the plant manager of the Austintown facility, testified on behalf of the Employer. The Petitioner called four employee witnesses: Mark Wasko, Kevin Gold, John Davis and Frank Whitehouse. The line leaders and production schedulers did not testify.

The Employer has corporate offices in Walton Hills and two manufacturing plants, one in Walton Hills, Ohio and the other in Austintown, Ohio. The latter is the only facility involved here. The Austintown facility was previously located in Boardman, Ohio. The Employer

³ The unit description is in accord with a stipulation between the parties.

operated two production shifts at the Boardman facility, however, one shift was eliminated when the facility relocated.

The Austintown facility employs approximately 35 employees, which include production employees, maintenance employees, truck drivers and clericals. All production is performed on the first shift with two production lines. On line one, there are approximately 12 employees, including group leaders and a line leader. On line two, there are approximately eleven employees, including group leaders and a line leader. The line leaders report directly to Martin.

There are two production schedulers.⁴ They work in an office which adjoins the plant manager's office and is located in the front of the building. The production schedulers report directly to the plant manager. The front office is separated from the production floor by a long hallway, approximately 25 to 30 feet away from the production floor. The line leaders and maintenance employees also have an office/workroom located near the front of the building. Maintenance employees are responsible for the repair and preventive maintenance of plant equipment.

Production Line Leaders

The Petitioner seeks to exclude all production line leaders from the unit on the ground that they are statutory supervisors under Section 2(11) of the Act.⁵ The Employer asserts that the line leaders are unit employees who lack any indicia of supervisory authority. As the party alleging supervisory status, the Petitioner bears the burden of proving that these individuals are supervisors. Northcrest Nursing Home, 313 NLRB 491, 496 at fn. 26 (1993).

⁴ As noted, the Employer refers to these employees as "production schedulers". For clarity that term will be applied to these individuals throughout this decision.

⁵ The Petitioner also contends that the term "line leader" is unknown to unit employees. The Petitioner argues that the witnesses establish that these individuals were simply known as "supervisors". Since a title is not dispositive of an individual's unit placement, the Petitioner's position in this regard will be considered as part of its overall contention of supervisory status.

Section 2(11) defines a supervisor as any *“individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively, to recommend such action...”*

The Board has held that the possession of any one of these statutory criteria is sufficient to confer supervisory status on an individual, provided the authority is exercised with independent judgment. Only individuals with “genuine management prerogatives” should be found to be supervisors. Chicago Metallic Corp., 273 NLRB 1677, 1688 (1985) enfd. in relevant part 794 F.2d 527 (9th Cir. 1986). Conversely, “the exercise of some “supervisory authority” in a merely routine, clerical, perfunctory, or sporadic manner does not confer supervisory status on an employee.” Feralloy West Co., 277 NLRB 1083, 1084 (1985).

For the reasons stated below, I find that the line leaders are not supervisors within the meaning of Section 2(11) of the Act and are appropriately included in the unit.

Each of the line leaders is responsible for “setting up” glass and ensuring an orderly flow of work. The line leader on line one is Mike Chamberlain; Ray Peterson is the line leader on line two. Chamberlain and Peterson work alongside production workers and spend anywhere from one half hour to seven hours per day in the production area according to the estimates of the witnesses. While estimates as to the amount of time that each line leader is engaged in production work vary, all the witnesses agree that Chamberlain and Peterson regularly fill-in for production employees who are late or absent. The evidence also demonstrates that Chamberlain and Peterson reassign employees when an employee is late or calls off.

Both Chamberlain and Patterson regularly oversee the work of other production workers and distribute production schedules. The line leaders do not attend production meetings and do not alter the production schedules, unless one of the lines shuts down. Occasionally, they train

employees. While, at times, line leaders use an office near the production area, as noted above, they spend a substantial portion of their time in production.

The evidence establishes that the average hourly wage of the thirty-one non-contested employees in the unit is \$10.19 per hour. The highest paid production and maintenance employee has worked for the Employer approximately three years. Chamberlain receives 75 cents more per hour than the highest paid non-contested employee, and has approximately four years of seniority. Peterson receives \$1.75 more per hour than the highest paid non-contested employee and has approximately eight years seniority. Like other production and maintenance employees, Chamberlain and Peterson are paid time and one half for hours worked over forty and receive production and attendance bonuses. Additionally, Peterson and Chamberlain wear the same uniform and enjoy the same benefit package as other unit employees.

The record indicates that production line leaders do not have the authority to hire. There is conflicting testimony regarding whether Chamberlain and Peterson have the authority to fire or otherwise discipline production employees. The Petitioner asserts that the line leaders regularly participate in the disciplinary process.⁶ The Employer maintains that Martin is solely responsible for disciplining employees. Martin testified that line leaders have no authority to issue any of the Employer's five levels of discipline, which includes a verbal warning, a written warning, a one day suspension, three day suspension, and job termination. Martin further testified that all reported misconduct is independently investigated by the plant manager and the corporate office.

Nevertheless, employee John Davis testified that approximately five years ago, Peterson sent home for sleeping on the job an employee named Kenny, whose last name is unknown. Davis further testified that Peterson told him that the employee was fired based on his

recommendation to former plant manager Jack Chelsen.⁷ Davis also stated that Chamberlain sent employee Dave, last name unknown, home after an argument. Davis further testified that Chamberlain or Peterson had not written a disciplinary report for anyone in the past five years.

Mark Wasko testified that Chamberlain sent him home after they had an argument. Wasko also testified that Chamberlain fired an employee named Carlos at the Boardman plant. The record does not indicate, however, the basis for Wasko's knowledge of this incident. Conversely, Martin testified that he fired Carlos Burgos, without any input from Chamberlain. The Employer introduced evidence of two termination reports, including Carlos Burgos that were signed solely by Martin. Additionally, the Employer introduced evidence of three warning reports for Petitioner's witness Wasko that were signed solely by Martin.

Record testimony is conflicting on who is responsible for evaluations, promotions, and wage increases. Martin testified that he is solely responsible for the evaluations of production and maintenance employees. He further testified that Chamberlain and Peterson make no recommendations regarding evaluations or promotions. Martin also testified that the wage increase schedule is set by headquarters. The amount of the wage increase is based on the evaluation submitted by Martin. Conversely, Petitioner's witness Mark Wasko testified that Martin told employees that the last promotions were based on Chamberlain and Peterson's recommendations. Wasko further testified that Chamberlain and Peterson make recommendations on employee evaluations and raises.

Martin, in conjunction with the corporate office, has the authority to approve vacation time. Additionally, Martin testified that he approves time off and overtime. Conversely, Wasko testified that Chamberlain and Peterson distribute overtime to the production and maintenance

⁶ Petitioner did not provide documentary evidence to support its assertion that line leaders discipline production workers.

workers. Martin testified that line leaders may let employees go home early with his permission. Line leaders may also allow an employee to leave in an emergency situation, and Chamberlain and Peterson must replace the employee until Martin is notified.

In its post-hearing brief the Petitioner discusses several factors which it argues establish the supervisory status of the line leaders. The Petitioner asserts that Peterson and Chamberlain direct the workforce on a daily basis, and make decisions regarding work assignments. The evidence shows that production employees generally perform the same tasks on the same line. The record further establishes that production employees are capable of performing various tasks on the line. Therefore, Chamberlain and Peterson's reassignment of work is based on the particular production task and knowledge of an employee's ability. The Board has held that direction and assignment of routine work of a repetitive nature is not indicative of supervisory status. ***Consolidated Services, 321 NLRB 845 (1996); Highland Telephone Cooperative, 192 NLRB 1057 (1971).*** Likewise, assignments and direction based on experience and craft skills is not indicative of supervisory authority. ***Cassis Management Corp., 323 NLRB 456 (1997).***

The record testimony reveals that the witnesses who testified consider Chamberlain and Peterson to be their supervisors and that on a few occasions, plant manager Martin told employees that Chamberlain and Peterson were supervisors. Even so, an employer's holding out an individual to employees as a supervisor is not necessarily dispositive of supervisory status. ***Blue Star Ready-Mix Concrete Corp., 305 NLRB 429, 430 (1991); Adair Standish Corp., 290 NLRB 317, 323 (1988).*** Rather, the evidence must establish that the line leaders exercised one of the supervisory indicia specified in the Act with independent judgment.

The Petitioner asserts that Chamberlain and Peterson regularly disciplined production workers. In this connection, Petitioner's witnesses testified that on several occasions,

⁷ It is noted that Davis' account is based upon an alleged conversation with Peterson and not upon Davis' own

Chamberlain and Peterson disciplined employees at the old Boardman plant location as long as five years ago. However, the Board has routinely held that sporadic or occasional isolated instances of supervisory functions is generally insufficient to meet the statutory definition of supervisor actions. **Hausner Hard Chrome of KY, Inc., 326 NLRB No. 36 (1998).** While the record does indicate that Chamberlain and Peterson verbally admonished production workers, the record is devoid of any documentary evidence to support Petitioner's allegations that they exercised any true supervisory authority. Conversely, the Employer provided documentation to support Martin's testimony that he is solely responsible for making disciplinary decisions. In view of the record as a whole, I do not consider a few sporadic instances to be sufficient to establish that Chamberlain and Peterson possess disciplinary authority sufficient to establish them as supervisors within the meaning of the Act.

The record establishes that these contested employees have the same supervision, benefits, and terms and conditions of employment as other unit employees. While they possess some minor authority, the evidence reflects that they merely execute and oversee work that is both routine and repetitive. Furthermore, the fact that the line leaders regularly fill-in and perform the same work as the production employees is a strong indication that the line leaders are merely lead persons. **Cook Composites & Polymers Co., 313 NLRB 1105, 1106-1107 (1994).**

Accordingly based on the foregoing and the record as a whole, I find that the Petitioner has failed to meet its burden of producing sufficient evidence to prove that the two line leaders are supervisors within the meaning of Section 2(11) of the Act. Thus, I find that the line leaders are statutory employees and are eligible to vote in the election directed herein.

Production Schedulers

knowledge of the incident. Peterson did not testify at the hearing.

The Employer seeks to include the production schedulers in the unit, contending that they are plant clerical employees who share a community of interest with the other unit employees. The Petitioner asserts that the two production schedulers, Lorrie Elchuck and Denise Kelly, are office clerical employees of the type generally excluded from a production and maintenance unit by the Board. I conclude that the production schedulers are office clerical employees who do not share a community of interests with other unit employees.

In determining whether employees share a community of interest, the Board examines such factors as mutuality of interests in wages, hours, and other working conditions, commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration. *Capri Sun Inc., 330 NLRB No. 158 (2000); Ore-Ida Foods, 313 NLRB 1016, 1019 (1994).*

As indicated previously, the production schedulers are located in an office in the front of the building. Additionally, they are physically separated from the production process by a long hallway that is at least 25 to 30 feet from the production process. The record indicates that the schedulers start at least 2 to 4 hours before other employees in the unit, and leave work at least 2 to 4 hours before other employees.

Record testimony indicates that Elchuck and Kelly are responsible for downloading customer orders into the Employer's computers at its Austintown facility. Once downloaded, customer orders are inputted into a scheduling program which optimizes the use of the glass, and specifies the customer orders for production. The production schedules are then placed on disks and distributed to five different areas on the production floor. According to Martin, Kelly and Elchuck spend half of their work day on these schedules.⁸ Record testimony indicates that the

⁸ Martin testified that there are at least eight schedules downloaded and distributed daily.

production schedulers, Chamberlain, or Peterson distribute the disk to the production employees. Record testimony indicates that some employees retrieve the disk from the schedulers' office.

According to plant manager Martin, Kelly spends approximately fifty percent of her time involved in customer service. Elchuck spends about forty percent of her time involved in customer service, and the remaining ten percent of her time inventorying supplies needed for window production. The production schedulers handle customer problems relating to missing windows and delivery errors. Martin testified that both production schedulers are responsible for color coding window stickers for shipment and marking windows for Argon gas. The evidence demonstrates that every day production schedulers prepare a glass yield report for corporate use and a production summary report that is used to figure production bonuses. The record further demonstrates that during the remaining time these employees answer telephones and distribute employee paychecks from their office.⁹

The evidence demonstrates that the amount of time that production schedulers interact with the unit varies from one hour a week to one or two hours per day. Moreover, there is no evidence of the interchange of work duties between production schedulers and production employees. Indeed, there is no evidence that the production schedulers are even qualified to work as production employees.

The record further indicates that there are other factors which distinguish the production schedulers from the other unit employees. They do not wear uniforms like the production employees. They do not park their vehicles in the same lot as the other production employees. The production schedulers eat separately and use separate bathroom facilities. They are salaried employees and enjoy a different vacation package than the other unit employees.

⁹ Martin testified that the corporate office handles the payroll, the customer billing and the accounts payable and receivable.

The Employer notes that there is some commonality between the working conditions of the production schedulers and other employees. Like the other employees, the production schedulers receive time and one half for all hours worked over forty and punch a time clock. They are also subject to the same work rules and disciplinary procedures. Like production employees, production schedulers are supervised by the plant manager.

These disputed employees appear to share characteristics common to both office clericals and plant clericals. On the basis of the record as a whole, however, I find that work performed by Elchuck and Kelly is more closely akin to that of office clericals rather than work performed by plant clericals.

The distinction between office and plant clericals is rooted in community-of-interest concepts. **Cook Composites & Polymers Co., 313 NLRB 1105 (1994)** Historically, employees who perform clerical duties in association with the production process and production employees are included in a production and maintenance unit as “plant clericals,” even though they may exercise secretarial skills. **Gordonsville Industries, 252 NLRB 563, 591 (1980); Goodman Mfg. Co., 58 NLRB 531, 533 (1944).**

In arguing that the production schedulers are plant clericals, the Employer emphasizes the fact that the production process is initiated by the disks generated by the production schedulers. However, the fact that the production schedulers prepare the product orders and distribute the disk is not alone sufficient to constitute a community of interest with production employees. **Avecor, Inc., 309 NLRB 73,75 (1992)**

Furthermore, the Board decisions set forth in the Employer’s post-hearing brief rely heavily on the significant interaction and interchange of duties between the clerical employees and the unit employees. Yet, the production schedulers at issue here simply do not engage in

any physical labor or movement associated with the manufacturing process and do not have any significant contact with the production and maintenance employees.

To illustrate, in **Healthco, Inc., 233 NLRB 835 (1977)** the Board ruled that the employer's three customer service representatives were plant clericals. The Board noted that the three customer representatives and warehouse employees worked under similar conditions as the other unit employees, and regularly assisted warehouse employees in resolving problems in filling orders. The production schedulers at issue here, are physically separated from the manufacturing operations and do not work directly in the production process.

Similarly, in **Hamilton Halter Co., 270 NLRB 331 (1982)**, the Board ruled that two clerical employees who handled customer orders were plant clericals. In **Hamilton Halter** the clerical employees were engaged in filling sample orders for customers and stamping sizes on tags. They also assisted shop employees in loading and unloading trucks. Once again, the production schedulers at issue here do not perform or assist in the physical labor engaged in by the production and maintenance employees.

Likewise, in **Syracuse University, 325 NLRB 162 (1997)**, the Board held that the duties performed by parking services clerical employees were more akin to plant clericals than office clericals. In its decision, the Board emphasized that there was regular and frequent interchange of work duties between Parking Services clerical and field employees. For instance, field employees assisted clericals with parking permit distributions and were trained to fill-in for clerical employees when they were on leave or overloaded with work. Likewise, clerical employees engaged in work duties generally performed by field employees. Here, however, the production employees and production schedulers do not interchange work duties at all. Furthermore, the Petitioner's witnesses testified that they have very little knowledge regarding the duties of the production schedulers.

Based on the record as a whole, the production schedulers at issue here have office equipment, job functions and working conditions more akin to those of office clerical employees. The schedulers are physically separated from the other unit employees by a long hallway and an enclosed office area. They work in the front of the building in an office adjoining the plant manager. The production schedulers use a computer terminal and regular office equipment to produce the plant production reports and schedules. The production schedules and reports are incidental to, and not an integral part of, the production process. The production schedulers do not even minimally engage in assisting the unit employees or work alongside them. Thus the contacts and interaction between the production schedulers and other unit employees in their work and nonworking settings is insubstantial. The daily contact highlighted by the Employer does not, by itself, make these employees plant clericals. **Container Research Corp., 188 NLRB 586, 587 (1971).**

Moreover, the production schedulers spend a significant part of their day answering telephones regarding customer problems and at times employees reporting absences. Additionally, they are salaried and work different hours than the other unit employees .

Based on the foregoing factors I find that the production schedulers are office clerical employees who do not have a close community of interest with production and maintenance employees. Therefore, the two production schedulers are excluded from in the unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on

vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 377, AFL-CIO.**

LIST OF VOTERS

In order to ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. ***Excelsior Underwear Inc.**, 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Co., 394 U.S. 759 (1969).* Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this decision. ***North Macon Health Care Facility**, 315 NLRB 359 (1994).* The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, by ***December 1, 2000***.

Dated at Cleveland, Ohio this 17th day of November 2000.

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8

440-1760-1501